

Report On
The Imminent Problems Facing
The Syriac
Monastery Of St. Gabriel
In Midyat, Turkey

Timotheos Samuel Aktas
Metropolitan Of Turabdin, Turkey

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1. INTRODUCTION

The purpose of this report is to inform the reader of the alarming concerns the Syriac Monastery of Mor [Saint] Gabriel in Midyat, Turkey ('Mor Gabriel Monastery'), is currently facing. The great injustice that may occur within the following weeks demands an immediate attention and satisfactory response by Turkish authorities to ensure that real estate rightfully owned by Mor Gabriel Monastery is not illegally occupied and acquired by locals surrounding the monastery.

As a result of the new initiative taken by the current government of Turkey since 2004, in 2005 the cadastral [property] land registry work begun at Mor Gabriel Monastery. In 2005 attempts were made by surrounding villages to occupy some of the lands of the Mor Gabriel Monastery: the incident was brought to the attention of the Turkish Government and to the European Union. Following the intense pressure that came from Europe and with the support of the Turkish government the occupation attempt was stopped, but the cadastral land registry works were not finished.

In July 2008 the cadastral land registry works restarted in the lands of Mor Gabriel Monastery and its surrounding villages. Whilst the cadastral works to determine the boundaries between Mor Gabriel Monastery and its surrounding villages were continuing, the surrounding villagers again occupied the centuries old lands of Mor Gabriel Monastery. These acts are being supported especially by the local tribe leaders (Aghas), where even the judge of the Cadastral Court who came to the area for investigation to determine the disputed boundaries was threatened. Also, in order to succeed with their attempt of occupation, the occupiers are instigating the local Moslem population against Christianity and are groundlessly accusing the Archbishop of Mor Gabriel Monastery with being against Islam. This attempt of occupying the historical lands of Mor Gabriel Monastery is a joint and organized effort by the surrounding villages together with the local Aghas. However, their real ambition is to occupy all the lands and properties of the historical Monastery of Mor Gabriel, so that they could abolish an important Christianity centre in the region, which is also of historical significance to Turkey.

2. MOR GABRIEL MONASTERY COMMUNITY FOUNDATION

It is well known in Turkey that non-moslem Community Foundations¹ were founded during the Ottoman period; and have been servicing their communities in religious, educational and charitable fields.

The latest list for Community Foundations operating in Turkey is found in the official gazette, “*Regulation regarding the Acquisition, Disposition of Immovable Properties [Real Estate] and Registration of the Immovable Properties which are disposed by Such Foundations in the name of Community Foundations*”; issued by the State Ministry and Vice Prime Ministry dated 24/01/2003; Official Gazette; Publication No. 25003 (“Official Gazette”). In line 151 of the Official Gazette, the Community Foundations noted as still active is the “*Foundation of Syriac Monastery of Deyrulumur (Mor Gabriel) in Midyat*”, i.e. Mor Gabriel Monastery.

Mor Gabriel’s Community Foundation pre-dates the Ottoman empires’ rule in Byzantium many hundred years and was actually founded in 397 A.D. (the history of Mor Gabriel Monastery is dealt with further below in Chapter 3). It is a monastery which acts, and has been doing so since its inception, as a theological seminary for training Syriac clergy; and, in recent years, also taking part in being a very important tourism centre for Turkey.

3. BRIEF HISTORY OF THE SYRIAC MONASTERY OF MOR GABRIEL

Mor Gabriel Monastery was founded by Mor Shmuel in 397 A.D. It is arguably one of the oldest Christian monasteries in service to date, where scholars and historians say, its existence is nothing short, but of a miracle. In comparison to other famous monasteries, Mor Gabriel Monastery is at least 400 years older than any monastery located in Mount Athos; the mountain which is well reputed with its monasteries and churches. Additionally, it was founded approximately 80 years before Saint Saba Monastery in Palestine; and one and a half century before the Saint Katherine Monastery in Sinai. Hence, the monks and nuns leading monastic life with their hymns and prayers have sustained a tradition which has continued for over 1600 years (except for periods when it was abandoned after plunders). On this essential fact alone, Mor Gabriel Monastery deserves to be held in high esteem by the entire Christian

¹ The term “Community Foundation” refers to religious or charitable organisations as existing during the time of the Ottoman Empire.

world. Since its inception, Mor Gabriel Monastery has been a focus point of the liturgical language and tradition of the Syriac Church, and is of significant importance for Syriac Orthodox Church. Throughout the centuries, the names of many significant Christian personalities have been identified with Mor Gabriel Monastery. These include, but definitely not limited to, the following: Mor Akhsenoyo (St. Philoxenos of Mabbug); Mor Shemun d'Zeyte of Hapsus (St. Simon of Olives, named after planting olive trees for the monastery); and Mor Gabriel of Beth Kutsan (the monastery owing its current name to him).

As stated above, Mor Gabriel Monastery has been of significant importance for the Syriac Church throughout history: a torch continuously flaming both for Syriacs in Turabdin and for those in Syriac Diaspora for the last 40 years. In recent years Mor Gabriel Monastery has been taking an active role in attending to the social problems of the Syriacs in Turkey. With the ever dwindling population of Syriacs in Turkey, and increasing problems, this has only heightened the importance of Mor Gabriel Monastery as a focus point.

4. THE CURRENT CRISIS OF UNJUST AND ILLEGAL ACQUISITION OF MOR GABRIEL MONASTERY'S REAL ESTATE

4.1 PROCEEDING BY SURROUNDING VILLAGES AGAINST CADASTRAL [PROPERTY] SURVEY OF MOR GABRIEL MONASTERY

In accordance with Article 4/7 of the Cadastre [Property] Law, the boundaries of the property survey area must be determined for the residential area when any cadastral activity is started within any residential areas. Mor Gabriel Monastery is located within the administrative boundaries of Güngören village in Midyat District, Mardin Province (being the far south east of Turkey next to the borders of Syria). The monastery is situated in the west of Güngören where its boundaries extend to the villages of Yayvantepe (Qartmin), Eğlence (Zinol), Çandarlı and Tulgalı. The location of Mor Gabriel Monastery is best put into perspective by referring to the Cadastre Map attached and marked as Annexure 2. The boundaries of Mor Gabriel Monastery are further defined in the government records of Provincial Private Administration (attached and marked Annexure 1) ("Administration Records") as follows:

East - Germik Külki Mico and Keveri Ceyzo;

West - Berihi Bessaani;

North - Miştaka Pire Kefiri Hizni (side facing to village of Eğlence); and

South - Keküla Hamziki.

As stated in the Introduction, previous attempts were made by the surrounding villages to illegally occupy and acquire Mor Gabriel Monastery's real estate; however, this was fortunately repelled through international pressure and Turkish authority intervention. Of alarming concern, in the current crisis, the same villages are using intimidation and fear tactics through use of the legal system to legitimize their attempts to unjustly acquire the real estate of Mor Gabriel Monastery. The villages attempting to carry out this illegal act, and the basis of their woefully inadequate grounds for doing so, are as follows:

Eğlence village - The boundaries of the Eğlence village and Mor Gabriel Monastery cross in the northern point of Mor Gabriel Monastery. The northern boundary of Mor Gabriel Monastery located in the administrative boundaries of Güngören village extends to, and includes, "MIŞTAĞA PIRE". Upon analyzing the sketch of the area between the villages of Güngören and Eğlence issued for the cases "Objection Against the Cadastral [Property] Survey Area" before Midyat Cadastral Court, it is clearly evident where the point of the location read as Miştağa Pire extends. At that time when the maps were drawn according to such sketches, the reaching points of the locations of high importance for the villages were added into the maps drawn according to the photographs taken from the air. When the boundaries of property survey area were determined, the legal entity of the village of Güngören also indicated "Miştağa Pire" as the farthest reaching point of its administrative boundaries.

The frivolous and vexatious nature of the claims by the Eğlence village is further evidenced by the boundary diagram of Mor Gabriel Monastery's boundaries, formerly approved and registered as true and correct by the very surrounding villages (refer to Boundary Diagram, signed and sealed by surrounding village mayors attached and marked as Annexure 3). The diagram, developed according to the Administration Records submitted as per Annexure 1, clearly delineates the boundaries of Mor Gabriel Monastery. This plan has then been registered into official records after being accepted and approved by the Mayors and councils of the Güngören (Keferbe) Village, EĞLENCE (ZİNOL) Village, Tulgalı (Hırbe Halit) Village and Çandarlı (Devrik) Village (refer to Annexure 3 which confirms the signature and seal of the surrounding villages). It is unequivocal that the plan was also approved by Eğlence village; however, with great concern this village is now contesting the veracity of very plan it approved.

In addition to the above, there is further objective evidence confirming Mor Gabriel Monastery as the legal owners of MIŞTAĞA PIRE and ÇALA DREJ². Tax records, show that Mor Gabriel Monastery have paid taxes regarding several portions of real estate since 1937 (refer to the Tax Records attached and marked as Annexure 4): the period when attempts were made to formally determine the administrative boundaries of the village. It is clear beyond all doubt that tax payments have been made by Mor Gabriel Monastery for the real estate located in ÇALA DREJ and MIŞTAĞA PİRE, which, with great confusion, are now subject to dispute by the surrounding Moslem villages. Accordingly, one may safely conclude that the real estate, in the locations named above, is undisputedly within the legal boundaries of Mor Gabriel Monastery.

However, the submissions of Güngören Village and therefore of the Monastery of Mor Gabriel are rejected by the decision, as it can be seen from the copy attached to Annex-5, rendered by the Midyat Cadastral Court under the file number 2008/42 and thus the cadastral survey area boundaries determined *ex officio* by Midyat Cadastre Directorate is considered as convenient. Thus, many of the immovable properties in different attributions are included in the cadastral survey area boundaries of Eğlence Village.

Yayvantepe village - In addition to the unfounded claims raised by Eğlence village, Yayvantepe (previously known as Qartmin) is also causing concern with its boundary dispute against Mor Gabriel Monastery. In the diagram (attached and marked as Annexure 3), the boundary between the village of Yayvantepe and Mor Gabriel Monastery is accepted as Hete Raza. During the property survey boundary determination proceedings between Yayvantepe village and Mor Gabriel Monastery, the boundary determined *ex officio* by the Midyat Cadastre Directorate is now accepted as the property survey area boundary between two villages.

With great alarm, much real estate which was in fact within the boundaries of Mor Gabriel Monastery has now incorrectly been included within the boundaries of Yayvantepe's property survey area. The decision made by Midyat Cadastre Directorate does not contain any sound reasoning; and appears to be based on hollow suppositions, disregarding the colossal evidence produced by Mor Gabriel Monastery confirming legal ownership of its real estate.

² Cala Drej is also being disputed by [Eğlence] village as not being owned by Mor Gabriel Monastery. Refer to the map marked as Annexure 2 which confirms its location and see annexure 4 for tax payment record.

As a result of the grossly erroneous decision made by Midyat Cadastre Directorate, the legal real estate of Mor Gabriel Monastery shall now unjustifiably and unfairly be registered under Eđence and Yayvantepe village names thereafter. Consequently, the villagers of the Eđence and Yayvantepe shall enjoy the right to dispose of Mor Gabriel Monastery's real estate, which Mor Gabriel Monastery had legally and rightfully held for in excess of 1600 years. This illegal act blatantly violates the right to property of Mor Gabriel Monastery's Community Foundation secured under both national law and European Convention on Human Rights and its protocols (this shall be discussed further below).

4.2 MOR GABRIEL MONASTERY'S REAL ESTATE BEING ACQUIRED AS "FOREST LAND" - Inside, and outside, the outer wall of the Monastery, there is much real estate owned by the Mor Gabriel Monastery since its foundation.

Forest land restrictions are made according to the Article 4 *et seq* before commencement of restrictions on the immovable properties subject to private property. When the forest land restrictions were implemented, much of the real estate owned by Mor Gabriel Monastery that was outside the outer wall of the monastery was not registered in the name of the monastery's Community Foundation. Thus, real estate was held to be within the boundaries of the area depicted as forest land in the Forest Management and Homeland map drawn in the 1950's. This is a heavy blow to Mor Gabriel Monastery given that the relevant area that extends to the outer wall equals approximately 250 decares (i.e. 250,000 square metres). Thus hundreds of *decares* utilized and in possession of Mor Gabriel Monastery's Community Foundations for years have now been classified to qualify as forestry and registered in the name of the Treasury; as a result of the forest cadastrate of the Gungören Village that was announced on 24 September 2008. The relevant real estate parts are included in section 101, parcel 1 and section 101, parcel 7.

In practice, the Forest Management and Homeland map mentioned above are strictly applied for the determination of forest cadastres, i.e. land that actually is forest land and not owned by any person or entity. However, in the current situation the so called "forestry" real estate is ipso facto under the private property of Mor Gabriel Monastery. There is nothing at odds, with a monastery, or any entity for that matter, possessing real estate not being cultivated for agricultural purposes for whatever time period, due to a change in its circumstances (for example, the number of people able to work the land has decreased). If Mor Gabriel

Monastery chooses not to cultivate its real estate, then this is perfectly within its legal right as the owner.

National legislation aside, recent international treaties and court decisions have afforded protection in respect of real estate under the possession of long-established entities. Article 42/3 of the *Treaty of Lausanne*, states that, “*The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities. All facilities and authorization will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey, and the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature*”.

There are also European Court of Human Rights decisions held against Turkey regarding the rights to property of Community Foundations being deteriorated or eliminated from the strict national rules. Likewise, under the Article 90/final of the Constitution of 1982 it is stated that the provisions of international agreements shall prevail in the case of a conflict between international agreements in the area of fundamental rights and freedoms and the domestic laws due to differences in provisions on the same matter. Accordingly, the decision on what constitutes forestry land should not be based on Turkish Forestry Law provisions alone, but should also consider international treaties and decisions determined by international Courts in connection with Turkey.

4.3 FALSE CRIMINAL COMPLAINTS

Upon reviewing the petition submitted on 20.08.2008 to Midyat Public Prosecution Office by the Mayors (*Muhtars*) of Yayvantepe, Eđence and andarlı villages (attached and marked as Annexure 6, it has been falsely claimed that Mor Gabriel Monastery have cut oak trees by occupying the forest land. Further to this, submitted to the Midyat Public Prosecution Office by Mahmut DÜZ, Fethullah ACAR and Abdullah İNAN on 27.08.2008 (refer to attached document marked Annexure 7 are a series of unfounded and wild allegations that Mor Gabriel Monastery Community Foundation has: occupied the forest land; settled on such land as an occupant without having any permits; conducted missionary activities through children between ages 10-12; that no identity declaration was made regarding such children; the Mor Gabriel Monastery building owned by the Community Foundation is a historical

museum and therefore required to have permission for prayer; children undergo religious education in the Monastery and anti-Turkish activities are carried out; the Community Foundation acts in contrary to Unity of Education Law; monks and metropolitans of the monastery are trying to destroy national unity and incite people to insurgency; the Community Foundation receives funds with from doubtful origins; and, that the bank accounts of the Community Foundation should be confiscated. Upon examining each allegation it is immediately noticeable that most have nothing to do with the land boundary claims. All the allegations are frivolous and vexatious; devoid of any logic or evidence, solely aimed with the malicious intent of rousing anti-Christian sentiments by the surrounding Moslem villages.

It is pertinent to briefly examine each false allegation to expose the sinister intent of the complainants and groundless nature of the allegations. This is dealt with below as follows:-

(a) *Allegation that Mor Gabriel Monastery Community Foundation occupied real estate attributed as forest land of the villages, Yayvantepi, Eđence and Candarlı* - No harm was ever caused to the lands attributed as forest and neither village has provided any evidence to support this false claim. If anything, the evidence establishes the opposite that the villages in question are attempting to unjustly acquire the forest and agricultural land of Mor Gabriel Monastery.

(b) *Allegation that outer wall of Mor Gabriel Monastery Community Foundation has lead to the destruction of forest land* - None of the trees within the boundaries of wall have been destroyed; on the contrary, the trees have been under protection. Mor Gabriel Monastery Community Foundation places the highest of importance to nature, history and culture within its boundaries. Mor Gabriel Monastery is visited by numerous local and foreign people including senior bureaucrats of the Turkish state, Europe and United States of America and wins unanimous approval as a result of its acute attention to culture, history and nature. On the other hand, unfortunately, trees and forest land outside of the boundaries of Mor Gabriel Monastery Community Foundation are open to abuse and hazard by the surrounding villages. Unlike the surrounding villages, Mor Gabriel Monastery Community Foundation has been actively involved in planting more trees within its boundary walls for the greater good the environment.

(c) *Allegation that animals were unable to pasture on forest land because of the*

boundary wall - Firstly, Article 19/1 of Forestry Law regulates the pasture of animals in forest land and deem this as a criminal offence, hence the complainants openly admit to violating the law. Secondly, the complaint flies in the face of all real estate rights, namely, being permitted to protect your property from all intrusions, so long as this is not in breach of any state or international law. Farm animals from surrounding villages are definitely an intrusion which Mor Gabriel Monastery, like any other person or entity, is entitled to prevent entering its property.

(d) *Allegation that Mor Gabriel Community Foundation settles anywhere as an occupant without having the requisite permits* - Clearly this allegation is based on pure ignorance of the fact that Mor Gabriel Monastery was founded in 397 A.D, being many hundreds of years before Yayvantepe, Eğlence and Çandarlı villages ever existed. If anything, Mor Gabriel Monastery should be making a claim against all three villages, as all the villages till the 1800's were mostly inhabited by Syriacs or were previously owned by the foundation of Mor Gabriel Monastery.

Mor Gabriel Monastery is of paramount importance, not only for the history of Turkey, but also the world history, as it is a significant centre for Christianity. As previously stated, the status of community foundation had been ascribed to Mor Gabriel Monastery in the Ottoman period where it was granted the right to acquire real estate. Thereafter, the Law of Foundations dated 05.06.1935 and numbered 2762, made it a legal entity like any other community foundations (as stated above, this status is confirmed in the Official Gazette).

The wall of Mor Gabriel Monastery is very old and no one, until now, has raised any objection against the location of the wall despite having ample opportunity to do so. The Community Foundation has not occupied any foreign land and has built the boundary wall enclosing area in its possession that it rightfully owns. This is further confirmed with the payment of real estate taxes by the Community Foundation (refer to previous comments above).

(e) *Allegation that children/students, whose identity is not being declared, between the ages 10-12 with of unknown origins have conducted missionary activities* - Missionary can briefly be defined as any activity aiming to spread a religion. Regular declarations are made to Gendarmerie Station of Yayvantepe village regarding all people in the Community Foundation and Mor Gabriel Monastery. The relevant people are members of the old Syriac community and children/students of Syriac families in the villages of Midyat and İdil

districts. The children/students residing at Mor Gabriel Monastery are given education opportunities their families cannot afford: and all reside in the Monastery only by consent of their families and/or custodians. . Given that Mor Gabriel Monastery Community Foundation is a charitable organization; necessary opportunities are provided for children of the Syriac community who have graduated elementary school in their villages in order to complete years 6 to 8 of elementary school and high school educations, since 8 years of education is not provided for in almost any of the villages within the region. Furthermore no schooling is available at high school level. Thus the statement, “*children of unknown origin*”, is completely incorrect and is in fact the children of the families, who are willing, but unable to provide access to an education for them due to the remote location of their village.

The claims that our Community Foundation conducts missionary activities are outright absurd and groundless. The false complaints put forward by the complainant party have only one objective; to incite hostility of the surrounding villages, and the Turkish public in general, against Mor Gabriel Monastery. In doing so, it is feared that an incident similar to the murders of SANTORO, the priest of the Santa Maria Church in Trabzon, Hrant Dink, and Tilmann Geske, victims of the slaughter in Zirve publishing house in Malatya, Uğur Yüksel and Necati Aydın, may be repeated against individual of the Community Foundation. If such an incident were repeated, this will definitely raise questions on whether Turkey is still the liberal and secular state it claims to be, or whether, it is slowing heading toward fundamentalism. If the latter is happening then this will compromise its image in the international arena; hampering its effort to enter the European Union. Of great concern in these examples is that the victims were first accused of carrying out missionary activities by locals; then they were falsely accused as missionaries via press; and finally allowed to be victims of violent attacks. It would appear that the same proponents against the Turkish state are following the same sinister strategy.

(f) *Allegation of violations of the Unity of Education Law* - . Articles 1 and 2 of the Unity of Education Law state that the Ministry of National Education is delegated with the authority in providing education and training services within the boundaries of Turkey. Additionally, schools administered by the Directorate of Religious Affairs and Foundations and by private foundations also fall within the authority of Ministry of National Education. The allegation of breaching Unity of Education Laws is superfluous and totally groundless. Students of education age are sent to school in Midyat every day, with all the requirements facilitating for their secular education and training being provided by Mor Gabriel Monastery. The

Community Foundation places great importance on the secular education provided by the Turkish State hence endeavouring to continually provide for the students needs. The students residing in Mor Gabriel Monastery only engage in further developing the Syriac language and culture. This is not forbidden by means of the Unity of Education Law, or any law for that matter. One need only examine the relevant regulations and treaties which confirm the same, and reads as follows:

(a) Article 40 of the Treaty of Lausanne; “Turkish nationals belonging to NON-MUSLIM minorities shall enjoy the same treatment and security [guarantee] in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right TO USE THEIR OWN LANGUAGE AND TO EXERCISE THEIR OWN RELIGION FREELY therein”

(b) Again, Article 42/3 of the Treaty of Lausanne; *“The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities. All facilities and authorizations will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey, and the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature”*.

(c) Finally, Article 37 of the Treaty of Lausanne; *“Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognized as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them”*. Likewise, according to Article 90/final of the 1982 Constitution; *“International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. (annexed clause: 07.05.2004 – Law No. 5170/Art.7) In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail”*. Clearly there is no violation of the Unity of Education Law. The claims put forward are entirely slanderous and in contrary to the applicable laws and international treaties which Turkey is a party thereto.

(d) *Allegation that Mor Gabriel Monastery is engaging in anti-secular activities against the Turkish Republic* - Mor Gabriel Monastery Community Foundation fully supports the secular ideology adopted by the Turkish Republic and its fundamental principles thereof. Mor Gabriel Monastery Community Foundation and other non-Muslim citizens have been allowed to practice religious freedom because of the Turkish Republic's protection and opposition to anti-secular activities. Thus to allege that Mor Gabriel Monastery is engaging in activity against the very protection the Turkish Republic is providing, is completely illogical. In any event, this issue has no relationship with the boundary dispute, and evidently, aimed at vilifying Mor Gabriel Monastery.

(e) *Allegation that Mor Gabriel Monastery is a historical museum and does not have permission for prayers* - Mor Gabriel Monastery, as stated above, has been in service for prayer over a millennium. It has continued to enjoy the vested rights granted even since creation of the Ottoman State. Whilst principally, it is a religious site, it is also a centre of tourism for Turkey and of great cultural and historical significance. Since its inception from the year 397 A.D, Mor Gabriel Monastery has never been considered, or classified, as a museum. It has been continuously a place of Syriac clergy and other ecclesiastics, as well as serving Syrians to perform their religious commitments.

(f) *Allegation that Syriac clergy and other unidentified people are engaged to incite people to insurgency and to destroy the spirit of national Turkish unity* - As stated above, since early years of Christianity, Syriac clergy have resided in Mor Gabriel Monastery performing their religious commitments. The situation is the same in nearly all monasteries around the world where monks and metropolitans maintain a vow of celibacy and are purely devoted to their religious duties inside the monastery. All the monks, together with our Reverend Metropolitan, in Mor Gabriel Monastery are from the villages within the boundaries of Mardin and have been performing their duties for decades without any objections or complaints.

(g) *Allegation that Mor Gabriel Monastery Foundation receives funds from questionable origins* - The assets of Mor Gabriel Community Foundation are regularly audited by Directorates of Foundations according to the Law of Foundations and other relevant regulations. If there was any breach of the regulations, this would have been detected during the audits. Mor Gabriel Monastery Community Foundation is sustained by the donations from the general community and philanthropists. This does not entail breaching any criminal or fiscal regulations. Yet again, this is another malicious allegation that has no relationship

whatsoever with the boundary dispute.

4.4 THE RIGHT OF COMMUNITY FOUNDATIONS TO ACQUIRE REAL ESTATE VIA ADVERSE POSSESSION

Although the Article 12/1 of the Law of the Foundations numbered 5737 with the publication date of 27.02.2008 states that “*The Foundations may acquire property, may dispose on their properties in any manner*”, in practice, there arise undecided situation for community foundations regarding the acquisition of immovable property via possession such as a real person.

As mentioned above, the property survey is still in progress in Güngören Village, within the administrative boundaries of which Mor Gabriel Monastery is located. It is presumed that the relevant survey will be completed soon.

The Law No. 5737 which is implemented in the frame of European Union adjustment laws, as stated above, grants the right for the community foundations to acquire real estate without having the permission of the General Directorate of Foundations. However, we consider that the extent of the acquisition of the real estate is required to be subject to broader interpretation by taking into account the scope of the Law and the decisions held by the European Court of Human Rights (in particular, the decision held for Fener Greek High School for Boys case³) regarding the community foundations in Turkey. But, unfortunately, there is a practice against the acquisition of real estate by the Community Foundations during the cadastral survey proceedings. In this case, uncertainty is experienced regarding the acquisition of property by our Community Foundation. If the applications proceed as such, a territory in size of hundreds of decares under the property and possession of our Community

³ According to Article 1, “**Protection of Right to Property**” of Protocol No. 1 annexed to the European Convention on Human Rights; every natural or **legal person** is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. In this particular case the Community Foundation of Fener Greek High School for Boys, claimed violation of its right to property regulated under Article 1 of Protocol No. 1 annexed to the European Convention of Human Rights. The Grand Chamber of Supreme Court, in its decision dated 1974, concluded that difficulties are encountered by legal entities incorporated by non-Turkish persons regarding acquisition of real estate by them and that Article 1 of Protocol No. 1 regarding the right to property is in breach of Article 14 of the European Convention on Human Rights regarding the non-discrimination rule by considering the claims that the Community Foundations of Greek Orthodox Minority, which are Turkish Foundations in law, are assumed “foreign legal entity” in practice. The Court continued to conclude that any foundation incorporated by Turkish and Muslim citizens enjoys the right to acquire real estate by means of donation, purchasing and *de jure* registration *etc.* and any failure to grant such rights to the minority foundations including Fener Greek High School Foundation results with a violation of the Article 14 of the European Convention Human Rights which regulates the non-discrimination. The European Court of Human Rights, in its decision regarding the application, has concluded there was a violation of the right of the applicant’s community foundation to the property which is secured under Article 1 of the Protocol No. 1.

Foundation may not be determined or registered in the name of our Community Foundation.

Another problem arises from the provision under the Article 14/1 of the Law of Cadastre [Property] which states; “*One or more immovable property up to sizes of 40 decares for irrigated lands and 100 decares for dry lands (40 and 100 decares are included) which have not been registered to land registry, on condition being located in the same survey area, may be determined in the name of the possessor if the same, titling to the property as the owner, proves this situation with documents, experts or witness statements that the peaceable possession has continuously lasted at least for twenty years*”. As can be seen in this regulation, it is possible for the possessor to acquire the immovable property in dry land up to 100 *decares* (100.000 m²). As you can see, an area of 100 *decares* is a very restricted area for an organization which has more than 1600 years of history. However, our Community Foundation hosts many people such as the religious men, children continue their education with our foundation, civil visitors who temporarily reside in our Monastery. On the other hand, it is one of the tourism centres, a great place of worship in which religious men are trained as well as being a significant centre of Christianity. Therefore, we say that the restriction of 100 *decares* for charity organizations such as our foundation may even be too little.

Here, the difficulties encountered from current practices are unfolded. However, a tendency, as non-recognition of the RIGHT TO PROPERTY VIA POSSESSION that is regulated under Article 14 of Law of Cadastre, arises due to reason that our Community Foundation is a legal entity. On the other hand, while we are not provided with the opportunity under the Article 14 of the Law of Cadastre, the restriction of 100 *decares* regulated under Article 14 is being invoked. When we approach the case with the sense of law and human rights philosophy, we are in opinion that the restriction above may not be applied for our Community Foundation.